

**Introduced by Senators Knight, Battin, Denham, Hollingsworth,
Margett, Morrow, and Oller**

February 21, 2003

An act to amend Section 166 of the Penal Code, relating to crimes.

LEGISLATIVE COUNSEL'S DIGEST

SB 878, as introduced, Knight. Contempt of court: violation of protective orders.

Existing law generally provides that every person guilty of specified contempts of court is guilty of a misdemeanor.

This bill would make technical, nonsubstantive changes to this provision.

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 166 of the Penal Code is amended to
2 read:

3 166. (a) Except as provided in subdivisions (b), (c), and (d),
4 every person guilty of any contempt of court, of any of the
5 following kinds, is guilty of a misdemeanor:

6 (1) Disorderly, contemptuous, or insolent behavior committed
7 during the sitting of any court of justice, in the immediate view and
8 presence of the court, and directly tending to interrupt its
9 proceedings or to impair the respect due to its authority.

10 (2) Behavior as specified in paragraph (1) committed in the
11 presence of any referee, while actually engaged in any trial or
12 hearing, pursuant to the order of any court, or in the presence of

1 any jury while actually sitting for the trial of a cause, or upon any
2 inquest or other proceedings authorized by law.

3 (3) Any breach of the peace, noise, or other disturbance directly
4 tending to interrupt the proceedings of any court.

5 (4) Willful disobedience of the terms as written of any process
6 or, court order, or out-of-state court order, lawfully issued by any
7 court, including orders pending trial.

8 (5) Resistance willfully offered by any person to the lawful
9 order or process of any court.

10 (6) The contumacious and unlawful refusal of any person to be
11 sworn as a witness; or, when so sworn, the like refusal to answer
12 any material question.

13 (7) The publication of a false or grossly inaccurate report of the
14 proceedings of any court.

15 (8) Presenting to any court having *the* power to pass sentence
16 upon any prisoner under conviction, or to any member of the court,
17 any affidavit or, testimony, or representation of any kind, verbal
18 or written, in aggravation or mitigation of the punishment to be
19 imposed upon the prisoner, except as provided in this code.

20 (b) (1) Any person who is guilty of contempt of court under
21 paragraph (4) of subdivision (a) by willfully contacting a victim
22 by phone or mail, or directly, and who has been previously
23 convicted of a violation of Section 646.9, shall be punished by
24 imprisonment in a county jail for not more than one year, by a fine
25 of five thousand dollars (\$5,000), or by both that fine and
26 imprisonment.

27 (2) For the purposes of sentencing under this subdivision, each
28 contact shall constitute a separate violation of this subdivision.

29 (3) The present incarceration of a person who makes contact
30 with a victim in violation of paragraph (1) is not a defense to a
31 violation of this subdivision.

32 (c) (1) Notwithstanding paragraph (4) of subdivision (a), any
33 willful and knowing violation of any protective order or stay away
34 court order issued pursuant to Section 136.2, in a pending criminal
35 proceeding involving domestic violence, as defined in Section
36 13700, or issued as a condition of probation after a conviction in
37 a criminal proceeding involving domestic violence, as defined in
38 Section 13700, or that is an order described in paragraph (3), shall
39 constitute contempt of court, a misdemeanor, punishable by
40 imprisonment in a county jail for not more than one year, by a fine



1 of not more than one thousand dollars (\$1,000), or by both that
2 imprisonment and fine.

3 (2) If a violation of paragraph (1) results in a physical injury,
4 the person shall be imprisoned in a county jail for at least 48 hours,
5 whether a fine or imprisonment is imposed, or the sentence is
6 suspended.

7 (3) Paragraphs (1) and (2) apply to the following court orders:

8 (A) Any order issued pursuant to Section 6320 or 6389 of the
9 Family Code.

10 (B) An order excluding one party from the family dwelling or
11 from the dwelling of the other.

12 (C) An order enjoining a party from specified behavior that the
13 court determined was necessary to effectuate the orders described
14 in paragraph (1).

15 (4) A second or subsequent conviction for a violation of any
16 order described in paragraph (1) occurring within seven years of
17 a prior conviction for a violation of any of those orders and
18 involving an act of violence or “a credible threat” of violence, as
19 provided in subdivisions (c) and (d) of Section 139, is punishable
20 by imprisonment in a county jail not to exceed one year; or in the
21 state prison for 16 months or two or three years.

22 (5) The prosecuting agency of each county shall have the
23 primary responsibility for the enforcement of the orders described
24 in paragraph (1).

25 (d) (1) A person who owns, possesses, purchases, or receives
26 a firearm knowing he or she is prohibited from doing so by the
27 provisions of a protective order as defined in Section 136.2 of this
28 code, Section 6218 of the Family Code, or ~~Sections~~ Section 527.6
29 or 527.8 of the Code of Civil Procedure, shall be punished under
30 the provisions of subdivision (g) of Section 12021.

31 (2) A person subject to a protective order described in
32 paragraph (1) shall not be prosecuted under this section for
33 owning, possessing, purchasing, or receiving a firearm to the
34 extent that *the* firearm is granted an exemption pursuant to
35 subdivision (h) of Section 6389 of the Family Code.

36 (e) (1) If probation is granted upon conviction of a violation of
37 subdivision (c), the court shall impose probation consistent with
38 the provisions of Section 1203.097 ~~of the Penal Code~~.

1 (2) If probation is granted upon conviction of a violation of
2 subdivision (c), the conditions of probation may include, in lieu of
3 a fine, one or both of the following requirements:

4 (A) That the defendant make payments to a battered women's
5 shelter, up to a maximum of one thousand dollars (\$1,000).

6 (B) That the defendant provide restitution to reimburse the
7 victim for *the* reasonable costs of counseling and other reasonable
8 expenses that the court finds are the direct result of the defendant's
9 offense.

10 (3) (A) For any order to pay a fine, make payments to a
11 battered women's shelter, or pay restitution as a condition of
12 probation under this subdivision or subdivision (c), the court shall
13 make a determination of the defendant's ability to pay. ~~It~~

14 (B) *In* no event shall any order to make payments to a battered
15 women's shelter be made if it would impair the ability of the
16 defendant to pay direct restitution to the victim or *any*
17 court-ordered child support.

18 (4) If the injury to a married person is caused in whole or in part
19 by the criminal acts of his or her spouse in violation of subdivision
20 (c), the community property may not be used to discharge the
21 liability of the offending spouse for restitution to the injured
22 spouse required by Section 1203.04, as operative on or before
23 August 2, 1995, or Section 1202.4, or to a shelter for costs with
24 regard to the injured spouse and dependents required by this
25 subdivision, until all separate property of the offending spouse is
26 exhausted.

27 (5) (A) Any person violating any order described in
28 subdivision (c) may be punished for any substantive offenses
29 described under Section 136.1 or 646.9. ~~No~~; *no* finding of
30 contempt shall be a bar to prosecution for a violation of Section
31 136.1 or 646.9. ~~However, any~~

32 (B) Any person held in contempt for a violation of subdivision
33 (c) shall be entitled to credit for any punishment imposed as a result
34 of that violation against any sentence imposed upon conviction of
35 an offense described in Section 136.1 or 646.9. ~~Any~~

36 (C) Any conviction or acquittal for any substantive offense
37 under Section 136.1 or 646.9 shall be a bar to a subsequent
38 punishment for contempt arising out of the same act.